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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO. 1058/2002

Cuttack, this the day of , 2004

Saubhagya Ku. Mongaraj

Applicant

Vrs.

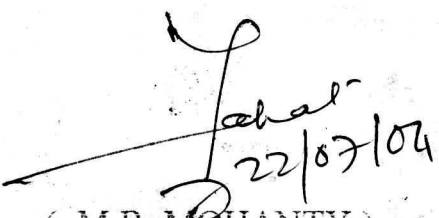
Union of India & Others


Respondent

FOR INSTRUCTIONS

(1) Whether it be referred to the Respondents or not? NB

(2) Whether it be circulated to all the Benches of the Central
Administrative Tribunal or not? M


(M.R. MOHANTY)
MEMBER (JUDICIAL)


(B.N. SOM)
VICE-CHAIRMAN

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CORAM:

HON'BLE SHRI B.N. SOM, VICE-CHAIRMAN

&

HON'BLE SHRI M.R. MOHANTY, MEMBER (J)

Sri Saubhagya Ku. Mongaraj, aged about 50 years. Son of Late Sarat Chandra Mongaraj, resident of Vill-Chaulia, P.S-Patkura, Dist-Kendrapara, at present working as Upper Division Clerk (UDC), Staff Training Institute (Programme), All India Radio, Bhubaneswar, OMFED Square, Chandrasekharpur, Bhubaneswar-17, Dist-Khurda.

..... Applicant.

By the Advocate(s) Mr.K.C. Kanungo

-Vs-

1. Secretary to Govt. of India, Ministry of Information & Broadcasting, New Delhi.
2. Prasar Bharati Broadcasting of India represented through Director general, All India Radio, Akashvani Bhawan, Sanshad Marg, New Delhi-1.
3. Deputy Director General (Admn.) Office of Director General, All India Radio, Akashabani Bhawan, Sanshad Marg, New Delhi-1
4. Deputy Director General, Eastern Region, All India Radio, Akashabani Bawan, Eden Garden, Kolkata-1, West Bengal.
5. Director, Staff Training Institute (Programme), All India Radio, OMFED Square, Chandrasekharpur, Bhubaneswar-17, Dist-Khurda.

..... Respondent(s)

By the advocate(s) Mr.A.K. Bose, Sr. ASC

ORDER

SHRI B.N. SOM, VICE-CHAIRMAN: This O.A. has been filed by Sri S.

Ku. Mangaraj seeking an order of the Tribunal quashing the impugned

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orders at Annexure-6 and Annexure-8 and seeking a direction to be issued to the Respondent to provide him all consequential service benefits.

2. The facts of the case in a nut shell are that the applicant was served with a charge memo dated 03.09.2001 under Rule 14 of the CCS (CCA) Rules 1965. Three Articles of charge were framed against him. The disciplinary case ultimately ended by issuing a warning to him to be careful in future "in behaving with his colleagues even when dealing with Association matters". It is against this order dated 22.10.2001 that he had filed an appeal to the Directorate General, All India Radio, New Delhi, through proper channel. The appeal was disposed of by the Dy. Director General (A) vide his order dated 19.08.2002 with the order that the ends of justice would be made if the case was remitted to the disciplinary authority for de-novo enquiry proceedings against the appellant from the issuance of a fresh charge-sheet.

3. The Respondents have filed counter opposing the application. They have denied the allegation of malafide brought against them by the applicant stating that the allegation was vague and without any basis. They have also denied that the applicant was ever harassed in the matter of promotion. They have further submitted that the applicant was issued an

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order of promotion in his turn. But it is he who did not accept the promotion on the ground that he should be posted to a place of his choice.

4. We have heard the Ld. counsels for both the parties and have perused the records placed before us.

5. The Ld. Counsel for the applicant has assailed the order of the appellate authority (Annexure-8) on two grounds. Firstly, that on the date of issue of the order Deputy Director General (A) was not the appellate authority in-terms of the order of the Respondent No.2 dated 19.08.2002 (Annexure-9). Secondly, that he could not have remitted the matter to the disciplinary authority both for initiating de-novo enquiry proceedings and for issue of a fresh charge-sheet. The Ld. Senior Standing Counsel, however, have argued that there was no infirmity in the said order of the appellate authority because it was a positive order quashing the punishment awarded to the applicant, and, therefore, the proceedings have to be made de-novo from the stage of issuing the charge-sheet.

6. Having heard both the parties and having gone through the records of the case we find that although a charge-sheet was issued under Rule 14 the disciplinary authority on receipt of the written statement of defence from the applicant decided to close the case after issuing a simple non- statutory warning to him to be careful in future in his inter personal dealings with his

colleagues. It is against this order that the applicant had preferred an appeal and the matter was accordingly disposed of by the order of the appellate authority. Warning is not a statutory penalty under Rule 11 of the CCS (CCA) Rules. In fact Rule 11 prescribes for the following penalties:-

“ Minor Penalties-


- (i) censure;
- (ii) withholding of his promotion;
- (iii) recovery from his pay of the whole or part of any pecuniary loss caused by him to the Government by negligence or breach of orders;
- (iii) (a) reduction to a lower stage in the time-scale of pay for a period not exceeding 3 years, without cumulative effect and not adversely affecting his pension.
- (iv) Withholding of increments of pay;


Major penalties-

- (v) Reduction to a lower stage in the time-scale of pay for a specified period, with further directions as to whether or not the Government servant will earn increments of pay during the period of such reduction and whether on the expiry of such period, the reduction will or will not have the effect of postponing the future increments of his pay;
 - (vi) Reduction to lower time-scale of pay, grade, post or Service which shall ordinarily be a bar to the promotion of the Government servant to the time-scale of pay, grade, post or Service from which he was reduced, with or without further directions regarding conditions of restoration to the grade or post or Service from which the Government servant was reduced and his seniority and pay on such restoration to that grade, post or Service;
 - (vii) Compulsory retirement;
 - (viii) Removal from service which shall not be a disqualification for future employment under the Government;
 - (ix) Dismissal from service which shall ordinarily be a disqualification for future employment under the Government.”
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In the circumstances, the disciplinary authority by his order dated 22.10.2001 (Annexure-6) had if-so-facto dropped the charge-sheet against the applicant and decided to let him off with a warning and counselled him to be careful in future in his inter-personal dealings. He had also cautioned him that failure to rectify himself would render him liable to stern disciplinary action in future. We find that the appellate authority in the conspectus of the matter without going into the merit of the plea of the Ld. Counsel for the applicant whether Deputy Director General (A) on 19.08.02 could have acted as appellate authority he had erred in passing an order to remit the case back to the disciplinary authority because there was no case under Rule 14 available then to be referred back to the disciplinary authority. Warning not being a statutory penalty, the applicant was within his right to have ventilated his grievance to the next higher administrative authority to the disciplinary authority for redress. However, having regard to the totality of the facts of the case and in view of the implicit decision of the disciplinary authority to drop the proceedings under Rule 14 against the applicant, and it being the inherent prerogative of the disciplinary authority to drop charge sheet, such a decision is not amenable to review. The ends of justice will be met if the case of the applicant is now considered for financial up-gradation under the ACP Scheme, if not already considered, as

per the scheme and as the disciplinary authority has inherent power to do so and such a decision being not amenable to review under the CCS (CCA) Rule 1965. We dispose of this OA being infructuous. No costs.


(M.R. MOHANTY)
MEMBER (JUDICIAL)


(B.N. SOM)
VICE-CHAIRMAN

CAT/CTC
Kalpeswar